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7                   UNITED STATES DISTRICT COURT  
8                   WESTERN DISTRICT OF WASHINGTON  
9                   AT SEATTLE

10                   GARY GERBER,  
11                                  Plaintiff,

12                   v.  
13                   FIRST HORIZON HOME LOANS  
14                   CORPORATION,  
15                                  Defendant.

Case No. C05-1554L

ORDER GRANTING MOTION  
TO STAY AND REMOVING  
CASE FROM ACTIVE CASELOAD

16                   TODD SQUIRE, *et al.*,  
17                                  Plaintiffs,

18                   v.  
19                   FIRST HORIZON HOME LOANS  
20                   CORPORATION,  
21                                  Defendant.

22                   This matter comes before the Court on plaintiffs' motion to stay this case (Dkt. #62) until  
23 after the Supreme Court rules in Wachovia Bank, N.A. v. Watters, 431 F.3d 556 (6th Cir. 2005),  
24 *cert. granted*, (June 20, 2006). Oral argument was scheduled on that case on November 29,  
25 2006.

26                   Defendant's defense is based primarily on its contention that plaintiffs' claims must be

27                   ORDER GRANTING MOTION TO STAY AND  
28                   REMOVING CASE FROM ACTIVE CASELOAD - 1

1 dismissed in their entirety because they are preempted by regulations of the United States  
2 Treasury Department, Office of the Comptroller of the Currency (“OCC”). Plaintiff counters  
3 that the federal laws do not apply to operating subsidiaries of national banks like First Horizon  
4 Home Loans Corporation. As in this case, one of the parties in Wachovia Bank, N.A. argued  
5 that wholly owned subsidiaries of national banks are subject to state regulation, and the relevant  
6 state laws and regulations are not preempted. Specifically, the case presents the issue of  
7 whether the OCC exceeded its congressionally delegated authority by promulgating 12 C.F.R.  
8 § 7.4006, which expands the definition of “national bank” to include operating subsidiaries.  
9 Wachovia Bank, N.A., 431 F.3d at 559-560. Other courts, including the Ninth Circuit, have  
10 held that preemption applies to claims against operating subsidiaries to the same extent as their  
11 parent national banks. Therefore, the Supreme Court’s opinion will offer valuable guidance.

12 Defendant does not oppose the motion. Moreover, the delay in awaiting the Supreme  
13 Court’s ruling is not likely to be protracted. Finally, once the case is stayed, defendant will not  
14 incur additional expenses defending the case. In contrast, if the Court decides the issue now in a  
15 manner that conflicts with the Supreme Court’s ruling, both parties will be forced to incur  
16 additional and needless expenses.

17 For all of the foregoing reasons, plaintiffs’ motion to stay the case (Dkt. #62) is  
18 GRANTED. The case shall be stayed until after the Supreme Court rules in the case of  
19 Wachovia Bank, N.A. v. Watters, 431 F.3d 556 (6th Cir. 2005), *cert. granted*, (June 20, 2006).

20 It is hereby ORDERED that this action is stayed and shall be removed from the Court’s  
21 active caseload until further application by the parties or order of this Court. The parties shall,  
22 within fifteen days of the Supreme Court’s ruling in Wachovia Bank, N.A. v. Watters, submit a  
23 joint report in this case notifying the Court of the outcome of that case and requesting that the

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28 ORDER GRANTING MOTION TO STAY AND  
REMOVING CASE FROM ACTIVE CASELOAD - 2

1 case be reopened.

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3 DATED this 23rd day of January, 2007.  
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7 Robert S. Lasnik  
8 United States District Judge  
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ORDER GRANTING MOTION TO STAY AND  
REMOVING CASE FROM ACTIVE CASELOAD - 3